



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 22, 2004

Ms. Mia Settle-Vinson  
Assistant City Attorney  
City of Houston - Legal Department  
P.O. Box 1562  
Houston, Texas 77251-1562

OR2004-8109

Dear Ms. Settle-Vinson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 209400.

The Houston Fire Department (the "department") received a request for employment, personnel, and disciplinary information pertaining to a retired fire fighter. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. You contend that the submitted information is made confidential under section 143.089 of the Local Government Code. The City of Houston is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files, a fire fighter's civil service file that the city civil service director is required to maintain, and an internal file that the employing department may maintain for its own use. Local Gov't Code § 143.089(a), (g). In cases in which a fire department takes disciplinary action against a fire fighter, it is required by section 143.089(a)(2) to place records relating to the investigation and disciplinary action in the fire fighter's civil service file maintained under section 143.089(a). The fire fighter's civil service file must also contain records relating to the periodic evaluation of the fire fighter by a supervisor. Local Gov't Code § 143.089(a)(3).

Records placed in the fire fighter's civil service file under section 143.089(a) must generally be released to the public upon request, unless some provision of chapter 552 of the Government Code permits the civil service commission to withhold the information. *See* Local Gov't Code § 143.089(f); Open Records Decision No. 562 (1990) at 6. However, information maintained in a fire fighter's internal file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. Tex. Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You inform us that two memoranda in the submitted documents that pertain to disciplinary action have been placed in the fire fighter's civil service personnel file as required under section 143.089(a)(2).<sup>1</sup> However, you state that the submitted information is part of the department's internal personnel file on the fire fighter that was created and is maintained for the department's use only. We therefore conclude that the submitted documents are confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code. Based on this finding, we do not reach your other claimed exception to disclosure.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within thirty calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within ten calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the

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<sup>1</sup> We note that section 143.089(g) requires an employing department that receives a request for information maintained in a file under section 143.089(g) to refer the requestor to the civil service director or the director's designee. You indicate that the requestor has made a similar request for information to the city's Human Resources Department.


governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within ten calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within ten calendar days of the date of this ruling.

Sincerely,



David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 209400

Enc: Submitted documents

c: Ms. Cheryl Hysick  
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(w/o enclosures)